REMARKS/ARGUMENTS

Reconsideration of this application in light of the above amendments and following comments is courteously solicited.

The examiner has rejected claims 2-7 and 10-18 under 35 U.S.C. 112, first paragraph. In the examiner's opinion, while the specification is enabling for the use of an oil-polymer mixer blended at 200°C, the specification is not enabling for use of an oil-polymer mixture blended at a lower temperature. In this regard, the examiner points to paragraph [0032] and examples 1 and 3 of the instant specification.

Applicants respectfully request that the examiner reconsider his rejection. Applicants submit that the specification is enabling for the use of an oil-polymer mixture blended at temperatures lower than 200°C. The examiner's attention is drawn to paragraph [0032] of the instant specification which he has cited in his office action. Paragraph [0032] sets forth the following:

> "When, however, polymer is to be incorporated in accordance with the preferred embodiment of the present invention, it is preferred that the mixing step, in this example carried out in tank 20, be conducted out with the heavy aromatic oil heated to a temperature of about 200°C. At such a temperature, the copolymer can be added in desirable amounts, preferably up to about 30% wt. based upon total weight of the polymer-oil blend, and mixing at relatively low shear for a period of between about 60 and about 180 minutes is suitable for dispersion of the polymer through the oil, for example to the point where solid particles cannot be seen by the naked eye."

It is clear from the foregoing that paragraph [0032] refers to "the preferred embodiment" of the present invention and

the quote preferred mixing step which is to be carried out at a temperature of about 200°C. Clearly the mixing can be carried out at temperatures lower than 200°C with a corresponding increase in the shear rate. This is clear to one of ordinary skill in the art. The lower the temperature, the higher the shear rate. The preferred embodiment discussed in paragraph [0032] indicates that at temperatures of about 200°C a relatively low shear rate can be used for mixing. Applicants submit that the specification is enabling and requests that the examiner withdrawn this rejection.

The examiner has rejected claims 10 and 14-18 under 35 U.S.C. 112, first paragraph. The examiner believes that the application is only enabling for blending asphalt and sulfur at a temperature of greater than 200°C. The examiner refers to paragraph [0014] of the instant specification. Initially it should be noted that [0014] of the instant specification refers to the summary of the invention. The examiner's attention is drawn to paragraph [0029] of the instant specification. Paragraph [0029] of the instant specification sets forth the following:

> "In this regard, this mixing step is preferably carried out at a temperature greater than 200°C more preferably at a temperature between about 220° and about 270°C, and most preferably at a temperature of about 250°C. At such a mixing temperature, the sulfur can quickly react with the asphalt as desired so as to be incorporated into the asphalt and provide the desired sulfur-asphalt blend. Further, in accordance with the present invention, mixing at this temperature and with sulfur in an amount between about 0.8 and about 10% wt., based upon weight of the sulfur-asphalt blend, has been

found to result in a suitable reaction and dispersion of sulfur through the asphalt without generation of substantial amounts of H_2S gas and the like."

This portion of the specification refers to the "preferred" mixing step and the "preferred" temperature at which the mixing step is carried out. Clearly, one of ordinary skill in the art, would understand that lower temperatures could be employed if the mixing time were to correspondingly increase. It is respectfully submitted that the instant specification is enabling to one of ordinary skill in the art.

Claims 1, 8 and 9 have been rejected over the prior art. Claims 2-7 and 10-18 have not been rejected over any prior art. Applicants have amended independent claim 1 to include the subject matter of dependent claim 2. Accordingly, it is believed that claims 1 and 3-9 are now patentably define over the cited and applied Clementoni et al. patent 4,283,231.

Independent claim 10 has not been rejected over any prior art reference. It is submitted that claims 10-18 are in condition for allowance.

An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

It is submitted that the claims as amended herein patentably define over the art relied on by the Examiner and early allowance of same is courteously solicited.

If any fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

Respectfully submitted,

Hercilio Rivas et al.

By _____

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on July 27, 2005.

Rachel Piscitelli